

Amendments to the Drawings:

An attached sheet of drawings, designated as sheet four (4), includes a new figure 2E as required by the Examiner. In Figure 2E, reference sign **102** has been added and signifies a body surface, as described in the paragraph beginning on page 9, line 5.

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-15, 19-24, 26-35, 39, 44-47, 51-55 are currently pending in this Application. Claims 25, 36-38, 40-43, 48 and 50 have been withdrawn from consideration. Claims 1-15, 19-24, 26-35, 39, 44-47, 51-55 have been rejected under 35 U.S.C. § 103. Claims 16-18 and 49 have been canceled herewith. Applicant added new claims 54-55. Claims 54-55 are described in the paragraphs beginning on page 15, line 7, and page 13, line 28 of the specification of the present application.

Election/Restriction

In section 2 of the United States Patent and Trademark Final Office Action mailed April 8, 2008 (hereinafter: the report), the examiner withdraws claim 50 from consideration as being directed to a non-elected invention. Without prejudice, in order to expedite the examination of the invention claimed in this application, Applicant withdraws claim 50 from consideration.

Drawings

In section 3 of the report, the examiner objects the drawings as failing to comply with the first part of 37 CFR 1.83(a). The examiner asserts that claims 51 and 52 recite features which are not depicted in the drawing, namely a hollow tube being winged or comprised of a thicker section outside of the body than inside of the body. In the light of the Examiner's remarks, Applicant added FIG. 2E, which is a block diagram that schematically depicts an apparatus having a section that is external to the body of a patient and is winged and/or thicker than another section of the apparatus that is internal to the body of the patient. This Figure is based on the description in the paragraph beginning on page 4, line 6 of the present invention. No new matter has been added.

35 U.S.C. § 112 Rejections

In section 5 of the report, the examiner rejected claim 51 under 35 U.S.C. 112, second paragraph, as being indefinite since it is unclear whether the recitation of the body in line 2 refers to the patient's body or a body of the apparatus. Applicant

amended claim 51 to clarify claim 51. Applicant believes that amended claim 51 is now definite under 35 U.S.C. 112, second paragraph.

35 U.S.C. § 103 Rejections

In section 6 of the report, claims 1-15, 19-24, 26-30, 32-35, 44-47 and 53 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Barry* in U.S. Patent No. 5,857,998. (hereinafter: *Barry*). It is submitted in response that claim 1 and claims 1-15, 19-24, 26-30, 32-35, 44-47 and 53 dependent thereon are patentable, in the light of arguments set forth below.

In order to clarify the scope of the claimed invention in the light of the differences between *Barry* and the present invention, Applicant has amended independent claim 1, emphasizing the distinctiveness of the claimed invention in the light of *Barry*, to include the following underlined distinguishing limitations:

"Apparatus adapted to be placed through a body tissue and implanted in a surface vein for the purpose of unimpeded intake of fluid through an aperture thereof, comprising:

...

a plurality of extensions ...operates to dislodge the impediment from said at least one aperture and to open at least one blood passageway among said plurality of extensions;

wherein said hollow tube has a length of not more than 10 cm and being sized and shaped so that it is adapted to be implanted in a surface vein and withstand the unimpeded intake of fluid for a period of one or more days; ..."

The basis for these changes is provided, *inter alia*, in the paragraphs beginning on Page 1, line 15, Page 9, line 14, and Page 13, line 16 of the present application.

Briefly, amended claim 1 now teaches an apparatus comprising a hollow tube characterized, *inter alia*, by a plurality of extensions which open one or more blood passageway. This hollow tube is adapted to be implanted in a surface vein and withstand the unimpeded intake of fluid for a period of one or more days.

In particular, amended claim 1 recites an apparatus for the purpose of unimpeded intake of fluid. The apparatus comprises a plurality of extensions, such as

balloons, at the proximity of a hollow tube that has a length of not more than 10 cm and being sized and shaped so that it is adapted to be implanted in a surface vein, see paragraphs on Page 1, line 15, Page 14, line 12, and Page 15, line 7.

In use, the extensions open at least one blood passageway in a manner that allows withstanding unimpeded intake of fluid for a period of one or more days, see paragraphs beginning on Page 9, line 14 and Page 13, line 16 of the present application.

In contrary, *Barry* describes an apparatus and a method for treating an irregularity in a wall of a vessel of a patient, see of *Barry's* abstract. As such, *Barry's* catheter has means for deploying an expandable stent and delivering a therapeutic agent for contacting the stent, see column 12, lines 35-40 of *Barry*. These means includes expendable balloons for stent deployment, see numeral 35 in FIG. 2A of *Barry*. Such expendable balloons actually teaching away from the claimed invention. Expendable balloons, which are used for stent deployment, are inflated and extended uniformly in the lumen of the vessel, for example as shown in numeral 35 in FIG. 2A of *Barry*. Such inflation is required for the deploying of the loaded stent in a manner that its external surface uniformly contacts the inner walls of the vessel. *Barry's* expendable balloons cannot form blood passages when extended, as explicitly recited in amended claim 1, as the cavities of the blood passages may cause the loaded stent to migrate from the deployment location and/or bend inwardly. Such a migration and/or bending may reduce the deployment accuracy and/or risk wound the proximate vessel walls.

In addition, *Barry* explicitly teaches expendable balloons which are used for occluding the lumen of the vessel in which *Barry's* catheter is located rather than allowing unimpeded intake, see numeral 35P and 35D in FIG. 2A and column 9, lines 8-20 of *Barry*. Such expendable balloons actually teaching away from the claimed invention that is explicitly intended for being used for unimpeded intake which cannot be performed when the when the containing vessel is substantially occluded, see column 9, lines 8-20 of *Barry*.

As described above, another distinguishing limitation of amended claim 1 is that the hollow tube *is adapted to be implanted in a surface vein and withstand the unimpeded intake of fluid for a period of one or more days*. Such an implantation is allowed as the hollow tube has a length of not more than 10 cm and sized and shaped

so that it is adapted to be implanted in a surface vein. As mentioned by the Examiner, *Barry* discloses an apparatus that may be used in any of the diverse passageways in a patient's body, see lines 34-44 of column 6 of *Barry*. As such, *Barry* must include a guidewire to the catheter in intrabody vascular lumens toward an irregular or afflicted wall portion. The presence of such a guidewire, which has to be longer than 10 cm and sized and shaped for large veins in which stents are placed, for example the great saphenous vein, in order to guide the catheter to any of the diverse passageways in a patient's body, for a period of one or more days, as explicitly recited in amended claim 1, may cause vessels and/or other body lumen to collapse and/or be occluded. Therefore, using such a guidewire teaches away from the claimed apparatus that is designed to be implanted in the patient's body for a period of one or more days.

It should be noted the Examiner asserts, when referring to claims 11 and 12, that *Barry's* apparatus is capable of being implanted in a patient's vein for a period of one or more weeks and/or months. The Examiner based his argument on the text in lines 21-26, column 9 of *Barry*. Applicant strongly urges that the Examiner erred in asserting that *Barry* describes such a capability. The text cited by the examiner is related to a delivery system that includes a membrane formed to delay the release of an agent. This cited text does not teach or imply a capability of a device to be implanted in a patient's vein for the purpose of unimpeded intake of fluid during a period which is longer than a period of a common local vessel treatment.

Based on the above, Applicant asserts that amended claim 1 is not obvious in view of *Barry* and that dependent claims 1-15, 19-24, 26-30, 32-35, 44-47 and 53 are consequently allowable as being dependent on an allowable main claim.

In section 8 of the report, claim 31 has been rejected under 35 U.S.C. §103(a) as being unpatentable over *Barry* in view of Zadno-Azizi in US Patent No. 6,958,059. The arguments made above in respect of the novelty and nonobviousness of amended claim 1 apply, *mutandis mutatis*, to claim 31 and based on that, Applicant asserts that dependent claim 31 is consequently allowable as being dependent on an allowable main claim.

In section 9 of the report, claims 51 and 52 has been rejected under 35 U.S.C. §103(a) as being unpatentable over *Barry* in view of Miller in US Patent No. 5,683,640. The arguments made above in respect of the novelty and nonobviousness of amended claim 1 apply, *mutandis mutatis*, to claims 51 and 52 and based on that,

Applicant asserts that dependent claims 51 and 52 are consequently allowable as being dependent on an allowable main claim.

In view of the above amendments and remarks it is respectfully submitted that claims 1-15, 19-24, 26-30, 31-35, 44-47 and 51-55 are now in condition for allowance. A prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



Martin D. Moynihan
Registration No. 40,338

Date: March 30, 2009

Enclosures:

- ☐ Petition for Extension (Two Months)
- ☐ Additional Claims Transmittal Fee
- ☐ Letter to Chief Draftsman
- ☐ New Drawing Sheet
- ☐ Formal Drawing Transmittal Sheet
- ☐ Complete Set of Replacement Drawing Sheets